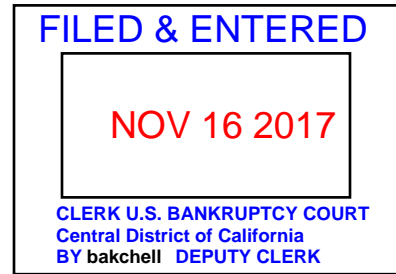


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**NOT FOR PUBLICATION**

**CHANGES MADE BY COURT**

**UNITED STATES BANKRUPTCY COURT**

**CENTRAL DISTRICT OF CALIFORNIA, LOS ANGELES DIVISION**

In re	)	Chapter 7
SHARON KELLY AKA SHARON K.	)	Case No. 2:17-bk-17863-RK
KELLY AKA SHARON KRIEGER,	)	Adv. No. 2:17-ap-01415-RK
Debtor,	)	ORDER ON DEFENDANT'S MOTION
	)	TO DISMISS AND NOTICE OF
_____	)	FURTHER STATUS CONFERENCE
MARK P. GROSS,	)	
Plaintiff,	)	<b>Motion to Dismiss heard:</b>
v.	)	<b>Date:</b> November 14, 2017
SHARON KELLY AKA SHARON K.	)	<b>Time:</b> 3:00 p.m.
KELLY AKA SHARON KRIEGER,	)	<b>Courtroom:</b> 1675
Defendant and	)	Next Status Conference
Debtor.	)	<b>Date:</b> January 16, 2018
	)	<b>Time:</b> 1:30 p.m.
	)	<b>Courtroom:</b> 1675
	)	
	)	Assigned to: Judge Kwan

On November 14, 2017, Defendant SHARON KELLY'S motion to dismiss came on for hearing before the Hon. ROBERT KWAN. Defendant was represented by RICHARD BAUM. Plaintiff MARK P. GROSS was represented by GARY A. STARRE

1 of STARRE & COHN, APC. After argument and submission, it is hereby ordered as  
2 follows:

- 3 1. The Court adopts its Tentative Ruling, copy attached as Exhibit "A", as its  
4 reasons for its ruling, along with the reasons stated during the hearing, and  
5 denies the Motion to Dismiss.  
6  
7 2. Defendant must serve and file her answer on or before December 5, 2017.  
8  
9 3. A Further Status Conference is set for January 16, 2018 at 1:30 p.m. in  
10 Courtroom 1675 of United States Bankruptcy Court, 255 East Temple  
11 Street, Los Angeles, California. A Joint Status Report must be filed by  
12 January 9, 2018.

13 It is so ordered.

14 ###

15  
16  
17  
18  
19  
20  
21  
22  
23  
24 Date: November 16, 2017



Robert Kwan  
United States Bankruptcy Judge

**Exhibit “ A ”**

**United States Bankruptcy Court  
Central District of California  
Los Angeles  
Judge Robert Kwan, Presiding  
Courtroom 1675 Calendar**

**Tuesday, November 14, 2017**

**Hearing Room 1675**

**3:00 PM**

**2:17-17863 Sharon Kelly**

**Chapter 7**

**Adv#: 2:17-01415 Gross v. Kelly**

**#40.00** Cont'd hearing re: Defendant's motion to dismiss adversary proceeding  
fr. 10/24/17

Docket 7

**Tentative Ruling:**

Deny defendant's motion to dismiss for the reasons stated in plaintiff's opposition. "Whether a debt is nondischargeable as a "domestic support obligation" under 11 U.S.C. 523(a)(5) or is dischargeable under 11 U.S.C. 523(a)(15) is a question of federal bankruptcy law and not state law." 4 March, Ahart and Shapiro, California Practice Guide: Bankruptcy, paragraph 22:242 at 22-38 (2016), citing In re Gionis, 170 B.R. 675, 681 (9th Cir. BAP 1994) and In re Sternberg, 85 F.3d 1400, 1405 (9th Cir. 1996), overruled on other grounds, In re Bammer, 131 F.3d 788, 792 (9th Cir. 1997). "Although the bankruptcy court must independently determine the issue, it may look to state law for guidance on whether a state court award was based on need (indicating the debt serves a 'support' function for nondischargeability purposes)." Id., at paragraph 22:243, citing In re Gionis, 170 B.R. at 682 and In re Chang, 163 F.3d 1138, 1140 (9th Cir. 1998)(relevant factor for bankruptcy court's determination is how state law characterizes the debt). Thus, how the state court characterized the debt in its written or oral ruling is not dispositive because it did not make a determination of the support issue under federal bankruptcy law as this court must independently make, though the state court's rulings and reasoning may be relevant. "When the characterization of a debt as alimony, maintenance or support is in dispute, the court should hold an evidentiary hearing to determine whether the debt is actually in the nature of alimony, maintenance or support within the meaning of section 523(a)(5) [or (a)(15)]." 4 Resnick and Sommer, Collier on Bankruptcy, paragraph 523.11[5] at 523-84 (16th ed. 2017). The complaint alleges a plausible claim for relief, and the matter should proceed with plaintiff still having to demonstrate that the debt is nondischargeable under 11 U.S.C. 523(a)(5) and/or (15). Defendant to serve and file an answer within 14 days of entry of an order denying the motion to dismiss, and the court will set a status conference under LBR 7016-1 within 45 to 60 days. Appearances are required on 11/14/17, but counsel may appear by telephone.

EXHIBIT A, PAGE 3